LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
MAR 10 1965
JOHN F. DAVIS, CLERK

No. 739

In the Supreme Court of the United States

October Term, 1965

[illegible] WILLIAM, petitioner

v.

UNITED STATES OF AMERICA

[illegible]

[illegible]

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	9
Conclusion	15

CITATIONS

Cases:

Cox v. *United States*, 332 U.S. 442	13
Dickinson v. *United States*, 346 U.S. 389	9, 13
United States v. *Clark*, 307 F. 2d 1	14
United States v. *Kutz*, 199 F. Supp. 205	14
United States v. *Tettenburn*, 186 F. Supp. 203	14
Wiggins v. *United States*, 261 F. 2d 113, certiorari denied, 359 U.S. 942	13, 14, 15

Statutes:

Universal Military Training and Service Act, 62 Stat. 604, 611, 622, 624:	
Section 6(g) (50 U.S.C. App. 456)	2
Section 12(a) (50 U.S.C. App. 462)	2
Section 16 (g) (50 U.S.C. App. 466)	2
Ohio Revised Code Ann., § 3101(10)	7

677991—63—1

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 799

TRUMAN EUGENE WILLARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 26–29) is not yet reported. The opinion of the district court (R. 164–181) is reported at 211 F. Supp. 643.

JURISDICTION

The judgment of the court of appeals was entered on January 16, 1963 (Pet. App. 29). The petition for a writ of certiorari was filed on February 7, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was basis in fact for the selective service board's denial of petitioner's claim to be classified as a minister.

STATUTE INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 611, 622, 624:

Section 6(g) [50 U.S.C. App. 456(g)]:

> (g) Regular or duly ordained ministers of religion, as defined in this title, * * * shall be exempt from training and service (but not from registration) under this title.

Section 12(a) [50 U.S.C. App. 462(a)]:

> Any * * * person * * * who, * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Section 16(g) [50 U.S.C. App. 466(g)]:

> (g)(1) The term "duly ordained minister of religion" means a person who has been ordained * * * to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the

principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

STATEMENT

Petitioner was convicted, in the United States District Court for the Northern District of Ohio, of refusal to obey the order of a selective service board to report for civilian work as a conscientious objector in lieu of military service (R. 164, 181). He was sentenced to imprisonment for a period of two years (R. 181). He claimed that there was no basis in

fact for the board's refusal to classify him as a minister, a classification which would have entitled him to a complete exemption from service (R. 171).

1. Petitioner's showing to the selective service system concerning his ministry in the Jehovah's Witnesses sect appears of record (1) in his selective service questionnaire of August 1955 and associated documents, and (2) in the transcript of his personal appearance before the board in March 1959 and documents presented in connection therewith.

a. In the questionnaire of August 1955, petitioner claimed that his ministry began on May 22, 1947, prior to his tenth birthday, when he was baptised (R. 14–15, 32). He alleged that he averaged 18 hours per month in "door to door activity" in which "all ministers must participate" (R. 32–33). He stated that knowledge used in this activity was "ascertained" by attending meetings which required approximately 23 hours per month (R. 32). As a member of the "Theocratic Ministry School in the local congregation," petitioner "set aside" 5 hours per month preparing talks he was given to prepare (R. 32–33). He also said that parts of the service set aside for him required two or three hours per month (R. 33).

Petitioner reported that he had been appointed as "a Bible Study Conductor to aid others in weekly Bible Studies," and that he was "an assistant to one of the servants" (R. 33, 102–103). He stated that he was "able to" administer baptismal, burial and matrimonial rites (R. 33–34). He reported that during vacation from school he had been "a summer vacation pioneer" for three years, and "offered 900

hours of service to Jehovah during those years," but was currently "unemployed" and "waiting" for work at the Bethel House of the sect (R. 33).

With petitioner's statement numerous affidavits and letters were submitted by persons describing him, variously, as a "minister" (R. 20–31, 40–42), a "company publisher" (R. 20, 39), a "Book Study Conductor in Area No. 8" (R. 24), a "Bible Study Conductor" (R. 40), a "Bible Study servant" (R. 29–30) and "a minister of the Theocratic Ministry School" (R. 24, 30), and attesting to his work as a "summer pioneer" (R. 20–22). One person described petitioner as "on his way" to "full time" ministry if his "present training course" remains uninterrupted (R. 23).

2. On January 16, 1959, petitioner was classified 1–A. He appeared personally before the selective service board in March 1959, and when asked to explain his "exact position in the church," stated, "I might say I am an assistant to the presiding minister in Hubbard, Ohio,—no,—I am his assistant in the capacity of training the congregation for ministerial activity, and house to house activity, or presentation at people's doors and I am also responsible for the training of these members that are enrolled in this class—the proper presentation and delivery of material" (R. 51). This class was called the "theocratic ministry school" (R. 51), and petitioner was a "Theocratic Ministerial Servant" (R. 66).

Petitioner stated that distribution of pamphlets was his "main activity." To this he devoted "ten, fifteen hours, I guess, a week, something like that," plus time for return visits or "personal Bible classes held in the

people's homes" (R. 76). As to two meetings of the congregation, petitioner was "the presiding minister over those meetings but not over the congregation" (R. 73).

Petitioner did not claim status as a Pioneer of the organization nor did he claim that he devoted the 1,200 hours of annual service required of a Pioneer. Upon request for "an accurate figure or estimate as to the number of hours, or weeks, or months, you devote to your ministerial duties," petitioner replied only "eons of time just studying practically, and helping other individuals and visiting people * * * door to door" (R. 72).

Petitioner was not of the rank of the "Assistant Congregation Servant," who would take charge of the congregation in the absence of the Congregation Servant (R. 54). He did not stand as number three in the congregation (R. 55). Asked how many of the 65 persons of the congregation were "ministers," petitioner denied "any idea," stating that he knew "quite a few that are" and that "there are 7 ministers who are responsible for various activities in the congregation" (R. 72).

Petitioner had conducted no baptisms (R. 77). These were conducted by circuit or district supervisors and—rarely—by the congregation leader (R. 80). Petitioner had supervised no Lord's Supper, the "one day of importance through the whole year," this being reserved to "the presiding minister" (R. 78–79).

At the age of eighteen, petitioner had obtained an Ohio Minister's License which authorized him to perform marriages (R. 100). Such a license was ob-

tainable from a probate judge upon credentials showing that the applicant was an ordained minister of the congregation (Ohio Revised Code Ann., § 3101.10). Petitioner had performed no marriage at the time of his personal appearance (R. 78). A record of a marriage conducted by him in Pennsylvania in the following June was added to the selective service record in July 1959 (R. 116–117). Petitioner had conducted three funerals (R. 60, 77). Funerals could be conducted by an "ordained minister"—"not an individual who is not baptized" (R. 77).

Petitioner had been assigned by the national organization in November 1957 to "teaching the congregation of 35 Bible students [at Sault Ste. Marie, Michigan] Bible subjects and training them to perform their necessary obligations." He remained there for about a year. Thereafter, he came to Hubbard, Ohio, where he was located at the time of the hearing (R. 65, 73, 95).

In the course of his personal appearance on March 20, 1959, petitioner stated that he was unemployed as to secular occupation, having been laid off from work at Saramar Aluminum on November 16, 1958. He was currently collecting unemployment compensation. He had worked at Saramar from May 16, 1958, subject to lay offs, earning "16 hundred dollars, 17—18—along in there" (R. 70–71). The work at Saramar had been full time. He had sought rearrangements of afternoon work to avoid interference with his religious work, but was unsuccessful. He did not leave the employment on this ground, but continued until laid

off (R. 70–71). At another time, not clearly set forth in the record, petitioner had been employed two days per week at a chicken slaughter house (R. 71, 73).

3. There was introduced in evidence a Memorandum to National Selective Service Appeal Board (R. 141–163), dated June 25, 1958, Gov. Exhibit No. 2, in which the General Counsel for Jehovah's Witnesses answered certain questions of the Appeal Board. This disclosed, *inter alia*, an organization of "Part-Time Ministers (Congregation Publishers)," numbering 197,541, and "Full-Time Ministers (Pioneers)," numbering 6,469 (R. 141–142).

The organization claimed exemptions for all male Pioneers annually devoting the required time of 1,200 hours to specified preaching work (R. 144). It did not claim exemption for every Congregational Servant, of which there was one for each congregation, but only for those who were also Pioneers or who could show that they devoted sufficient time to the "ministry" to claim that it was their vocation rather than an avocation (R. 144, 145, 149).

4. Petitioner was classified by the selective service board as a conscientious objector (1–O) but was denied classification as a minister (R. 14). The board likened him to a "Sabbath School teacher" (R. 105).

The district court found basis in fact for the board's classification. It observed that while Jehovah's Witnesses consider all their members ministers, whether full time or part time (R. 177–178), the statutory requirement is that the ministry must be the registrant's regular and customary vocation. It held that petitioner had failed to establish that the minis-

try was his vocation since he had been vague as to the time devoted to ministerial work and the record disclosed no substantial time (R. 178–179). The court noted that petitioner made no claim to being a Pioneer or a full-time minister (R. 179), and that nothing indicated a position of leadership or showed that petitioner's service would leave his "congregation without a cleric" (R. 179).

The court of appeals affirmed on the basis of the memorandum opinion of the district court (Pet. App. 29) noting particularly "the uncertainty surrounding the amount of time [petitioner] devoted to claimed ministerial activities" and the fact that in a congregation of only 65, petitioner was neither the presiding minister of the congregation nor a first assistant (Pet. App. 27).

ARGUMENT

This Court said in *Dickinson* v. *United States*, 346 U.S. 389, 394–395:

> The Universal Military Training and Service Act does not permit direct judicial review of selective service classification orders. * * * "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."
>
> The ministerial exemption, as was pointed out in the Senate Report accompanying the 1948 Act, "is a narrow one, intended for the leaders of the various religious faiths and not for the members generally." S. Rep. No. 1268, 80th Cong., 2d Sess. 13. Certainly all members of a religious organization or sect are not entitled to the exemption by reason of their membership, even though in their belief each is a

> minister. Cf. *Cox* v. *United States*, 332 U.S. 442 (1947). * * * Preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to bring a registrant under § 6(g). These activities must be regularly performed. They must, as the statute reads, comprise the registrant's "vocation." And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption.

A review of the extensive record as well as the full opinion of the district court shows that, on the facts presented, the selective service board's ruling that the petitioner is not entitled to exemption as a "regular or duly ordained minister of religion" was neither arbitrary nor capricious. The board afforded petitioner a full hearing and fairly and properly applied the exemption statute in accordance with the decisions of this Court.[1] There is no cause for further review.

1. Petitioner, by his own admission, was not the leader—known as the Congregation Servant—of his congregation of Jehovah's Witnesses. Nor was he the Assistant Congregation Servant, nor even the third in succession in his small congregation of 65 members.

[1] In its memorandum opinion denying petitioner's motion for judgment of acquittal, the district court stated (R.180): "From examination of the record it is apparent that defendant was treated courteously by the Board and that he was given every opportunity over a six-year period to submit evidence in support of his claim. If the Board had any doubts as to what action it should take, it resolved them in Willard's favor by classifying him as 1-O. The Court finds that there was no denial of procedural due process to defendant before the Local Board or the Appeal Board."

He was one of seven persons having functions not of spiritual leadership, but of a limited administrative or training nature. These facts combined with the vagueness of the evidence as to the period of time petitioner devoted to religious activity each week, the limited nature of his activities in the religious training of others and the absence of any showing that he administered the ordinances of public worship, provide ample support for the board's denial of the ministerial exemption.

a. By his own admission, petitioner's main activity was distribution of pamphlets, as in the case of most of the members of this essentially evangelistic sect. Beyond this, petitioner presented evidence only of some teaching of other members, without indicating whether he was solely responsible for their training or whether a number of members performed interchangeably, as was the case with respect to occasional discourses from the pulpit.

Petitioner was vague as to his training of others as a "Theocratic Ministerial Servant" or a "Bible Study Servant." He said he gave instruction concerning "the proper presentation and delivery of material" (R. 51) or "how to effectively leave the volumes with the people and show them how to study in their own home at their convenience" (R. 66). The selective service board aptly likened his position to that of a Sunday school teacher (R. 105). It is clear the Congress, in its selective service legislation, contemplated exemption only of the limited number of ministers and not the unlimited numbers of church administrators and Sunday school instructors.

b. Petitioner was also vague as to the time devoted to these various activities. Conspicuously absent was any claim to the status of Pioneer, with its service requirement of 1,200 hours per year, or any claim to a current record as a full-time minister. When asked outright for an accurate figure or estimate of time devoted to his ministerial duties, petitioner retreated into vague generalities about "eons of time" (*supra*, p. 6) and "ten, fifteen hours, I guess, a week, something like that" devoted to the main activity of distributing pamphlets (*supra*, pp. 5–6). He had been in full-time secular work for Saramar Aluminum until laid off by the company the preceding November.[2] Patently, when petitioner could obtain full-time secular employment he did so. Petitioner cannot properly predicate error by the board on the basis of time estimates he gave three and one-half years earlier, in 1955, especially when those estimates amounted only to 18 hours per month in house-to-house activity in which all members must participate, plus 23 hours of attending meetings, five hours of preparing talks, and two or three hours' participation in service meetings, for an aggregate of 48 or 49 hours per month, none

[2] We do not find authority for petitioner's implication of current two-day-per-week secular work (Pet. 2–3, 12, 19–20) at the record citation offered, i.e., R. 71. This referred only to "last year," whereas, petitioner stated, "The last place of employment was Saramar Aluminum" (R. 70).

clearly devoted to actual leadership of the congregation.[3]

c. Petitioner had almost no experience in the administration of ordinances of public worship. In all the long claimed period of his ministry, he had conducted no "Lord's Supper," concededly the important annual ritual of the congregation, nor any baptism. Both of these ceremonies were reserved for the higher, actual ministry of the sect. He had conducted three funerals but this was apparently a function which could be performed by any baptized member (see *supra*, p. 7). After the board rejected his claim to exemption as a minister, he conducted one wedding.

The performance of ceremonies is clearly an element of the statutory exemption. Thus, the statute expressly excludes from exemption one who does not "regularly, as a vocation, teach and preach * * * *and* administer the ordinances of public worship * * *" (*supra*, p. 3, emphasis added). Petitioner wholly failed to establish that he met the latter requirement.

2. Petitioner argues that the instant decision presents a conflict of authority with *Wiggins* v. *United States*, 261 F. 2d 113 (C.A. 5), certiorari

[3] The statement "I devoted 100 hours expressly knocking at people's doors * * *" was for an earlier period (R. 72-73). Therefore, we cannot accept petitioner's assumption of 100 hours of service in his Question Presented II (Pet. 3) and elsewhere in his petition (pp. 12, 18-19, 21).

denied, 359 U.S. 942. At the time the government petitioned for a writ of certiorari in *Wiggins*, it feared that the decision would upset the system for classification of Jehovah's Witnesses based upon prior decisions of this court (*e.g.*, *Dickinson* v. *United States*, *supra*, and *Cox* v. *United States*, 332 U.S. 442) and upon the June 25, 1958, memorandum of their General Counsel (see Statement, *supra*, p. 8). Thus far, that apprehension has proved justified only in the area of the Fifth Circuit,[1] for the *Wiggins* decision has not been followed in other circuits. It has been distinguished in *United States* v. *Clark*, 307 F. 2d 1, 3 (C.A. 6), and *United States* v. *Kutz*, 199 F. Supp. 305, 209 (E.D. Wis.) where the facts were similar to those presented here. It was rejected in *United States* v. *Tellenburn*, 186 F. Supp. 203, 206 (D. Md.) where the court stated:

> This court must respectfully decline to follow the Wiggins decision for three reasons. First, it does not agree with the holding of the Court of Appeals for the Fifth Circuit that the position of a book study conductor is roughly analogous to that of an assistant minister or assistant pastor; secondly, as previously stated, it appears to this court that the statutory requirement for exemption as a minister that one teach and preach as his regular and customary vocation was not met in the Wiggins case; and thirdly, the relevance of the type of religious duties engaged in as to the issue of whether or not they constituted "teaching and preaching" was not considered.

---

[1] Records of the Selective Service reveal that in four cases district courts in the Fifth Circuit have reluctantly granted judgements of acquittal on the basis of *Wiggins*. Prosecution has been declined by the United States in at least five other cases.

We believe that the decision below is correct and that therefore this case does not in itself warrant review. We cannot deny, however, that it is in conflict with *Wiggins* v. *United States*, *supra*.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

MARCH 1963.